

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability

Petition of Texas 11 Acquisition Corporation for  
Waiver of Number Portability Provisions of Part  
52 of the Commission's Rules

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CC Docket No. 95-116

**ORDER**

**Adopted: October 26, 2005**

**Released: October 27, 2005**

By the Deputy Chief, Spectrum and Competition Policy Division:

**I. INTRODUCTION**

1. In this order, we dismiss without prejudice the petition filed by Texas 11 Acquisition Corporation (Texas 11) seeking a temporary waiver of the Commission's wireless local number portability (LNP) requirements.<sup>1</sup> We conclude that the facts and circumstances stated in Texas 11's petition do not establish that any waiver is needed at this time.

**II. BACKGROUND**

2. Texas 11 is currently supporting local number portability for all of its numbers in accordance with the Commission's rules.<sup>2</sup> On September 28, 2005, Texas 11 filed a petition seeking a temporary waiver of the Commission's wireless local number portability requirements as applied to certain numbers. Texas 11 explains that, early in 2005, it acquired a number of licenses from Cingular after the Cingular/AT&T Wireless merger was completed.<sup>3</sup> As a result, Texas 11 is planning a changeover from the Cingular switch system currently operating in the newly acquired license territories to its own switching system. During the system changeover, which has been scheduled to occur from October 22, 2005 to January 29, 2006, Texas 11 is concerned that it may not be able to support porting for all numbers. Therefore, Texas 11 requests a limited waiver of the porting requirements during this period.<sup>4</sup>

**III. DISCUSSION**

3. The Commission may, on its own motion or on petition, waive its rules when good cause is

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<sup>1</sup> See Telephone Number Portability, CC Docket No. 95-116, Request for Limited Waiver from Texas 11 Acquisition Corp., filed Sept. 28, 2005 (Texas 11 Petition).

<sup>2</sup> Texas 11 Petition at 1. See 47 C.F.R. § 52.31 (Deployment of long-term database methods for number portability by CMRS providers).

<sup>3</sup> Texas 11 Petition at 1.

<sup>4</sup> *Id.* at 1-2.

demonstrated.<sup>5</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>7</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>8</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>9</sup>

4. We find that Texas 11's petition does not establish that a waiver is necessary at this time. Although Texas 11 claims that a waiver of the porting requirements is necessary because it may be unable to port certain numbers during its system changeover, evidence from its petition indicates that porting should continue to be available for all numbers during the system changeover period. Specifically, Texas 11 indicates that, during the changeover period, it will continue to support porting for all customer numbers that were added to the system since Texas 11 took control. In addition, Texas 11 states, porting will be supported for all numbers previously in the system, by virtue of commitment of assistance from Cingular.<sup>10</sup> In view of this evidence that porting will continue to be supported during the changeover period, we find that a waiver of the porting rules is unnecessary. Texas 11 acknowledges that it is requesting a waiver only because "it cannot be certain that Cingular will be able to comply with its good-faith offer to provide porting assistance ..."<sup>11</sup> We find that Texas 11's speculation regarding Cingular's ability to fulfill its commitment is insufficient basis to justify granting a waiver of the porting requirements. In the event that a situation develops where Texas 11 is unable to support porting due to circumstances beyond its control, it may file a new request for waiver at that time.

#### IV. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c), sections 1.3 and 52.31 of the Commission rules, 47 C.F.R. § 1.3 and 52.31, and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the petition filed by Texas 11 is DISMISSED without prejudice.

#### FEDERAL COMMUNICATIONS COMMISSION

Jeffrey S. Steinberg  
Deputy Chief, Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau

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<sup>5</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>9</sup> *Id.* at 1159.

<sup>10</sup> Texas 11 Petition at 2.

<sup>11</sup> *Id.*